

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 22, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NANCY P.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 4:21-CV-5018-RMP

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT, without oral argument, are cross-motions for summary judgment from Plaintiff Nancy P.¹, ECF No. 11, and the Commissioner of Social Security ("Commissioner"), ECF No. 13. Plaintiff seeks judicial review, pursuant to 42 U.S.C. § 1383(c)(3), of the Commissioner's denial of her claim for Disability Insurance Benefits ("DIB") under Title II of the Social Security Act. *See* ECF No. 11 at 2. Having considered the parties' motions, the administrative record,

¹ In the interest of protecting Plaintiff's privacy, the Court uses Plaintiff's first name and last initial.

1 and the applicable law, the Court is fully informed. For the reasons set forth below,
2 the Court grants summary judgment in favor of the Commissioner.

3 **BACKGROUND**

4 ***General Context***

5 Plaintiff applied for SSI on June 7, 2019, alleging disability beginning on
6 March 1, 2018. Administrative Record (“AR”) 145. Plaintiff maintained that the
7 following conditions limit her ability to work: “regional simplex dystrophy (RSD),
8 generalized stiffness”; “trigger finger middle and index finger, loud popping”;
9 “sensitivity to cold and touch, loss of muscle”; “retin accullular cysts left index
10 finger”²; “volar aspect of index finger metacarpal”; “life threatening CDIF, weight
11 loss”; sleep disturbances; muscle cramps; chronic fatigue; depression; and anxiety.
12 AR 174. The application was denied initially and upon reconsideration, and Plaintiff
13 requested a hearing. *See* AR 68–82.

14 ***Administrative Hearing***

15 On June 18, 2020, Administrative Law Judge (“ALJ”) Stewart Stallings held a
16 hearing telephonically³ at which he heard from Plaintiff and Vocational Expert

17 ² This condition is written “retinacular cyst . . . at left index finger” elsewhere in
18 the record. AR 886.

19 ³ The ALJ explained on the record that the hearing was being held telephonically
20 due to the COVID-19 pandemic, and Plaintiff consented to proceeding by
21 telephone. AR 31.

1 Carrie Whitlow. AR 29–67. Plaintiff was represented by attorney Timothy
2 Anderson. AR 29.

3 Plaintiff testified that she was self-employed cleaning houses prior to and
4 during the onset of her allegedly disabling symptoms. AR 35. Plaintiff underwent
5 hand surgery in December 2018, and Plaintiff maintains the “overload of antibiotics”
6 that she took after the surgery “ruined” her stomach and “started” a series of health
7 problems that by the time of the hearing included diagnoses of “severe Crohn’s
8 disease” and lupus. AR 35, 39. Plaintiff also indicated that she was experiencing
9 “chemo fog,” but did not specify what condition she was undergoing chemotherapy
10 to treat. *See* AR 35.

11 Plaintiff recalled that when she first sought treatment from primary care
12 provider Michael Adling, D.O., in March 2018, she was waking up with swelling
13 and throbbing pain in her left hand, which is her dominant hand, and would try to
14 relieve the pain and swelling by applying heat or cold to the area and taking
15 ibuprofen. AR 43. Around that time, Plaintiff also was experiencing abdominal
16 pain. AR 43–44. Plaintiff testified that she began seeing a gastroenterologist to
17 determine the cause of the abdominal pain and spent one month in the hospital due
18 to gastrointestinal symptoms. AR 43–44.

19 Plaintiff testified that she began to lose housekeeping accounts due to her need
20 to use the bathroom so often at clients’ houses, and her fatigue, which resulted in her
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1 arriving later at clients' houses and staying there longer. AR 45–50. Plaintiff
2 recalled that she was working only approximately eight to twelve hours per week.
3 AR 47. Plaintiff doubted that anyone would have hired her for a “sit-down job”
4 because she has no history of working that way and still would need to use a
5 bathroom often during a shift. AR 51.

6 Plaintiff testified that at the time of the hearing she was living on a farm with
7 her husband. AR 43. Plaintiff stated that her husband traveled for work “for months
8 at a time” and, recalling the spring and early summer of 2018, there were things that
9 she could previously do on the farm that became more of a struggle. AR 43.

10 The ALJ asked VE Whitlow how Plaintiff’s prior work cleaning houses would
11 be classified, and the VE responded that the work falls within the “Housekeeping
12 Cleaner” designation with an exertional level of light, despite Plaintiff describing
13 herself as occasionally lifting up to 100 pounds when she moved furniture. AR 54.

14 The ALJ then asked the VE to consider a hypothetical person with Plaintiff’s
15 age, education, and work experience who could work at a medium exertional level,
16 lift up to fifty pounds occasionally, lift and carry up to 25 pounds frequently. AR
17 55. The ALJ added that the hypothetical individual would be limited to frequent
18 handling and fingering with the left, dominant hand, and would need to be in close
19 proximity to a restroom. AR 55–56. The VE responded that an individual with
20 those requirements and characteristics could perform the work of an Industrial
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1 Cleaner, with the caveat that while there are “more than a million” such jobs in the
2 national economy, the VE “might erode those numbers by 50% to account for the
3 fact that there are some environments where your access to a restroom would be . . .
4 perhaps prohibitive for lack of a better way of saying it.” AR 56–57. The VE also
5 opined that the hypothetical person could perform the work of either a Store Laborer
6 or a Laundry Laborer. AR 57.

7 Plaintiff’s counsel asked the VE about whether, in a competitive work
8 environment, employers generally allow workers to take breaks outside of the
9 normal breaks provided to them. AR 59. The VE responded that employers
10 generally do not tolerate time off task or loss of productivity more than ten percent
11 of the working day. AR 59. Therefore, an employee’s need to spend approximately
12 48 minutes of time outside of scheduled breaks using the bathroom during the day
13 may be tolerated. AR 59–60. The ALJ added that employers allow people to use
14 the bathroom outside of their normal breaks or lunch and the extent to which an
15 employee’s frequent use of the bathroom would be tolerated would depend on how
16 long they would be gone from the workplace. AR 61.

17 Plaintiff’s counsel also asked the VE to quantify an employer’s tolerance for
18 absenteeism, and the VE responded that “if someone is absent from work or showing
19 up late on an ongoing basis more than one day per month . . . typically results in
20 someone being terminated over time.” AR 61.

1 ***ALJ's Decision***

2 On September 9, 2020, ALJ Stallings issued an unfavorable decision. AR 15–
3 24. Analyzing Plaintiff's claim according to the five-step evaluation process, ALJ
4 Stallings found:

5 **Step one:** Plaintiff last met the insured status requirements of the Social
6 Security Act on June 30, 2018. AR 17. Plaintiff did not engage in substantial
7 gainful activity from her alleged onset date of March 1, 2018, through her date last
8 insured. AR 17. Plaintiff's earnings records do not show income after the alleged
9 onset date, but Plaintiff reported work through July 2019, earning approximately
10 \$400 per month. AR 17 (citing AR 167). However, this work activity did not rise to
11 the level of substantial gainful activity. AR 17.

12 **Step two:** Plaintiff has medically determinable impairments that, in
13 combination, are severe: atrophic vaginitis, gastric ulcer, liver cyst, peptic ulcer,
14 hiatal hernia, and mild esophagitis. AR 17. The ALJ further wrote that he
15 considered evidence of dysuria, fatigue, low back pain, menopausal symptoms,
16 pelvic pain, hematuria, and postoperative pain, "as those symptoms/conditions were
17 assessed prior to the date last insured" and found that "there is minimal clinical
18 evidence to corroborate or support the finding of significant impact on the claimant's
19 ability to perform work-related activities as a result of these impairments." AR 18.
20 The ALJ also considered the effect of other medical conditions diagnosed from
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1 December 2018 until the date of the hearing, including pulmonary emboli,
2 osteoarthritis and other degeneration of the hands and feet, fatty liver, depressive
3 disorder, and anxiety disorder, and found that “meaningful evidence of these
4 conditions does not exist prior to December 2018 or later, fully six months after the
5 date last insured.” AR 18. The ALJ continued: “The record does not provide
6 sufficient evidence to relate these impairments or their functional impact to the
7 relevant period (prior to the date last insured). Therefore, these conditions are not
8 medically determinable for purposes of the claimant’s Title II claim.” AR 18.

9 **Step three:** The ALJ concluded that Plaintiff’s mental impairments,
10 considered singly and in combination, did not meet or medically equal the severity
11 of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20
12 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526)). AR 19. Specifically, the ALJ
13 found:

14 The claimant’s physical impairments do not manifest the signs,
15 symptoms, and findings required to meet or medically equal any listing.
16 In making this finding, the undersigned specially considered listings
17 5.05 (Chronic liver disease), 5.06 (Inflammatory bowel disease), and
18 6.00 (Genitourinary disorders). No treating or examining physician has
19 recorded findings satisfying the criteria of any medical listing, nor does
20 the evidence show medical findings that are equivalent in severity to
21 the criteria of a medical listing. The discussion of the medical evidence
throughout this decision supports this finding.

AR 19.

1 **Residual Functional Capacity (“RFC”)**: The ALJ found that, through the
2 DLI, Plaintiff had the RFC to perform “medium work as defined in 20 C.F.R.
3 404.1567(c) except the claimant must have constant proximity to restroom facilities
4 (*i.e.*, no outdoor field-type work in which bathrooms are not immediately
5 available).” AR 19.

6 In determining Plaintiff’s RFC, the ALJ found that Plaintiff’s statements
7 concerning the intensity, persistence, and limiting effects of her alleged symptoms
8 “are not entirely consistent with the medical evidence and other evidence in the
9 record” for several reasons that the ALJ discussed. AR 20.

10 **Step four**: The ALJ found that Plaintiff has no past relevant work. AR 22.

11 **Step five**: The ALJ found that Plaintiff was 58 years old on her DLI and,
12 consequently, is considered by the Social Security regulations as a person of
13 advanced age. AR 22 (citing 20 C.F.R. § 404.156). Plaintiff has at least a high
14 school education. AR 22. The ALJ found that, through the date last insured, there
15 are jobs that exist in significant numbers in the national economy that Plaintiff could
16 have performed considering her age, education, work experience, and RFC. AR 22–
17 23. Specifically, the ALJ recounted that given Plaintiff’s ability to perform a full
18 range of medium work, with additional limitations that were posed by the ALJ to the
19 VE, the VE identified the following representative occupations that Plaintiff would
20 have been able to perform with her RFC: industrial cleaner, store laborer, and
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1 laundry laborer. AR 23. The ALJ concluded that Plaintiff was not disabled within
2 the meaning of the Social Security Act at any time from March 1, 2018, the alleged
3 onset date, through June 30, 2018, Plaintiff's DLI. AR 23.

4 The Appeals Council denied review. AR 1–6.

5 **LEGAL STANDARD**

6 ***Standard of Review***

7 Congress has provided a limited scope of judicial review of the
8 Commissioner's decision. 42 U.S.C. § 405(g). A court may set aside the
9 Commissioner's denial of benefits only if the ALJ's determination was based on
10 legal error or not supported by substantial evidence. See *Jones v. Heckler*, 760 F.2d
11 993, 995 (9th Cir. 1985) (citing 42 U.S.C. § 405(g)). "The [Commissioner's]
12 determination that a claimant is not disabled will be upheld if the findings of fact are
13 supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
14 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere
15 scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,
16 1119 n.10 (9th Cir. 1975); *McCallister v. Sullivan*, 888 F.2d 599, 601–02 (9th Cir.
17 1989). Substantial evidence "means such evidence as a reasonable mind might
18 accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389,
19 401 (1971) (citations omitted). "[S]uch inferences and conclusions as the
20 [Commissioner] may reasonably draw from the evidence" also will be upheld. *Mark*

1 v. *Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the
2 record as a whole, not just the evidence supporting the decisions of the
3 Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989).

4 A decision supported by substantial evidence still will be set aside if the
5 proper legal standards were not applied in weighing the evidence and making a
6 decision. *Browner v. Sec’y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir.
7 1988). Thus, if there is substantial evidence to support the administrative findings,
8 or if there is conflicting evidence that will support a finding of either disability or
9 nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*,
10 812 F.2d 1226, 1229–30 (9th Cir. 1987).

11 ***Definition of Disability***

12 The Social Security Act defines “disability” as the “inability to engage in any
13 substantial gainful activity by reason of any medically determinable physical or
14 mental impairment which can be expected to result in death or which has lasted or
15 can be expected to last for a continuous period of not less than 12 months.” 42
16 U.S.C. §§ 423(d)(1)(A). The Act also provides that a claimant shall be determined
17 to be under a disability only if her impairments are of such severity that the claimant
18 is not only unable to do her previous work, but cannot, considering the claimant’s
19 age, education, and work experiences, engage in any other substantial gainful work
20 which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A). Thus, the
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1 definition of disability consists of both medical and vocational components. *Edlund*
2 *v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

3 ***Sequential Evaluation Process***

4 The Commissioner has established a multi-step sequential evaluation process
5 for determining whether a claimant is disabled within the meaning of the Social
6 Security Act. 20 C.F.R. § 404.1594. Step one determines if she is engaged in
7 substantial gainful activity. If the claimant is engaged in substantial gainful
8 activities, benefits are denied. 20 C.F.R. § 404.1520(a)(4)(i).

9 If the claimant is not engaged in substantial gainful activities, the decision
10 maker proceeds to step two and determines whether the claimant has a medically
11 severe impairment or combination of impairments. 20 C.F.R. § 404.1520(a)(4)(ii).
12 If the claimant does not have a severe impairment or combination of impairments,
13 the disability claim is denied.

14 If the impairment is severe, the evaluation proceeds to the third step, which
15 compares the claimant's impairment with listed impairments acknowledged by the
16 Commissioner to be so severe as to preclude any gainful activity. 20 C.F.R. §
17 404.1520(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt. P, App. 1. If the impairment
18 meets or equals one of the listed impairments, the claimant is conclusively presumed
19 to be disabled.

1 If the impairment is not one conclusively presumed to be disabling, the
2 evaluation proceeds to the fourth step, which determines whether the impairment
3 prevents the claimant from performing work that she has performed in the past. If
4 the claimant can perform her previous work, the claimant is not disabled. 20 C.F.R.
5 § 404.1520(a)(4)(iv). At this step, the claimant's RFC assessment is considered.

6 If the claimant cannot perform this work, the fifth and final step in the process
7 determines whether the claimant is able to perform other work in the national
8 economy considering her residual functional capacity and age, education, and past
9 work experience. 20 C.F.R. § 404.1520(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137,
10 142 (1987).

11 The initial burden of proof rests upon the claimant to establish a prima facie
12 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
13 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
14 is met once the claimant establishes that a physical or mental impairment prevents
15 her from engaging in her previous occupation. *Meanel*, 172 F.3d at 1113. The
16 burden then shifts, at step five, to the Commissioner to show that (1) the claimant
17 can perform other substantial gainful activity, and (2) a "significant number of jobs
18 exist in the national economy" which the claimant can perform. *Kail v. Heckler*, 722
19 F.2d 1496, 1498 (9th Cir. 1984).

20 / / /

ISSUES ON APPEAL

The parties' motions raise the following issues regarding the ALJ's decision:

1. Did the ALJ erroneously discount Plaintiff's subjective symptom testimony?
2. Did the ALJ erroneously discount the medical source opinion from Plaintiff's treating physician?

DISCUSSION

Plaintiff's Subjective Complaints

Plaintiff argues that the ALJ failed to provide clear and convincing reasons for rejecting Plaintiff's testimony about the frequency and duration of breaks that she would have required to work prior to the DLI. ECF No. 11 at 3. Plaintiff maintains that the record contains evidence that Plaintiff's complaints of gastrointestinal symptoms pre-dated the June 30, 2018 DLI and supports that she had symptoms that would have prevented her from sustaining full-time work during the relevant period. ECF No. 14 at 2–3. Specifically, Plaintiff asserts that “the record contains reference to fatigue, a symptom of Crohn's disease, in August 2017, several months prior to the alleged onset date.” *Id.* at 2 (citing AR 221–24). Plaintiff adds that the record shows that Plaintiff established care with Dr. Adling in February 2018 after she had been experiencing abdominal pain for one year, a symptom that Plaintiff maintains is a primary symptom of Crohn's disease. *Id.* (citing AR 233, 242–43). Plaintiff

1 continues with a recitation of Plaintiff’s history of seeking medical care for
2 abdominal pain in April and May 2018, the addition of diarrhea and vomiting as
3 symptoms by the second half of June 2018, and her abnormal weight loss by
4 December 2018. *Id.* at 2–3 (citing AR 271–77, 232, 248, 280, 831–32, 941, and
5 958). Plaintiff argues that the ALJ acknowledged that Plaintiff was having
6 gastrointestinal symptoms that would have required frequent and urgent bathroom
7 use prior to her DLI. *Id.* at 3– 4 (citing AR 21).

8 The Commissioner responds that Plaintiff sought limited treatment for her
9 gastrointestinal complaints before her DLI, and when she did seek treatment
10 described her symptoms as acute rather than a lingering condition. ECF No. 13 at
11 5–6 (citing AR 22, 228, 234, 245, 271, 280, 296, and 299). The Commissioner
12 further asserts that the ALJ reasonably relied on the evidence that Plaintiff continued
13 to engage in heavy labor on her farm or ranch to find that Plaintiff’s subjective
14 complaints were inconsistent with her activities. ECF No. 13 at 7 (citing AR 20,
15 1101, 1105, and 1110).

16 To reject a claimant’s subjective complaints, the ALJ must provide “specific,
17 cogent reasons for the disbelief.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)
18 (internal citation omitted). The ALJ “must identify what testimony is not credible
19 and what evidence undermines the claimant's complaints.” *Id.* Subjective symptom
20 evaluation is “not an examination of an individual’s character,” and an ALJ must
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1 consider all of the evidence in an individual's record when evaluating the intensity
2 and persistence of symptoms. *See* SSR 16-3p, 2016 SSR LEXIS 4 (2016).

3 In deciding whether to accept a claimant's subjective pain or symptom
4 testimony, an ALJ must perform a two-step analysis. *Smolen v. Chater*, 80 F.3d
5 1273, 1281 (9th Cir. 1996). First, the ALJ must evaluate "whether the claimant has
6 presented objective medical evidence of an underlying impairment 'which could
7 reasonably be expected to produce the pain or other symptoms alleged.'"
8 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v.*
9 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Second, if the first test is met and there
10 is no evidence of malingering, "the ALJ can reject the claimant's testimony about the
11 severity of her symptoms only by offering specific, clear and convincing reasons for
12 doing so." *Smolen*, 80 F.3d at 1281.

13 The ALJ found that Plaintiff's level of daily activity was inconsistent with
14 Plaintiff's allegation that her gastrointestinal symptoms, as well as her left-hand
15 swelling and pain, prevented her from maintaining full-time work. AR 20. The ALJ
16 cited to records indicating that Plaintiff had been working less than full time for
17 months prior to March 1, 2018, when Plaintiff alleges that her symptoms became
18 disabling. AR 20 (citing AR 166–70). The ALJ also cited to medical records from
19 after the DLI, when Plaintiff alleges her symptoms continued and/or became worse,
20 indicating that, even then, Plaintiff was continuing to care for herself, do household
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1 chores, and maintain the farm. AR 20, 1101, and 1104. The medical treatment
2 notes indicate that Plaintiff discussed with her provider how she could protect her
3 left little finger while she is doing “heavy activities, i.e., moving hay, animals, etc.”
4 AR 1104; *see also* 1101 (medical record from a March 2019 visit indicating “The
5 patient cleans houses for her work almost daily as well as taking care of her animals,
6 feeding them at home as well. Apparently her husband is out of town working
7 frequently so she is the one doing the chores at home.”). The record further reports:
8 “She apparently is a very avid skier since age 3 and questioned whether or not she
9 should ski anymore this season.” AR 1104. These activities of daily living and
10 Plaintiff’s continuing part-time work at levels that are not less than what she was
11 working pre-DLI are specific, clear, and convincing reasons for not fully accepting
12 Plaintiff’s statements about the severity of her debilitation.

13 The ALJ also found that medical records do not “show much treatment, or
14 many abnormal diagnostic findings, prior to the date last insured.” AR 21–22. The
15 administrative record offers substantial evidence supporting this finding. *See* AR 78
16 (reciting Plaintiff’s treatment history from February 2018 through DLI and noting
17 imaging and lab work “within normal limits from the history of having [epigastric]
18 pain which was relieved by food and aggravated by an empty stomach and its
19 location and the fact that she takes 2 ibuprofen nightly because of chronic headaches
20 the diagnosis was felt to be at least gastritis if not ulcer disease.”). Indeed,

1 Plaintiff's own testimony was inconsistent with her claim that her symptoms were
2 disabling before the DLI. *See* AR 39 (Plaintiff's testimony that she could no longer
3 leave her house due to Crohn's disease and lupus, which "all started" after her
4 stomach was ruined by antibiotics after her December 2018 hand surgery). The
5 medical record indicating minimal treatment prior to the DLI, test results within
6 normal limits considering Plaintiff's ingestion of ibuprofen, and Plaintiff's reports of
7 acute rather than chronic symptoms prior to the DLI also amount to clear, specific,
8 and convincing reasons to not fully credit Plaintiff's subjective symptom testimony.

9 Having reviewed the ALJ's decision and the record, the Court identifies
10 several clear, specific, and convincing reasons, in the context of the full record, for
11 not fully accepting Plaintiff's statements concerning the intensity, persistence, and
12 limiting effects of her claimed symptoms and their effect on her ability to work
13 before the DLI. Accordingly, the Court denies Plaintiff's Motion for Summary
14 Judgment and grants summary judgment to the Commissioner with respect to this
15 issue. *See* ECF Nos. 11 and 13.

16 ***Medical Opinion of Plaintiff's Treating Physician***

17 Plaintiff argues that the ALJ erred in rejecting the second of two opinions
18 from Plaintiff's treating physician, Michael Adling, D.O., assessing several of
19 Plaintiff's impairments as severe. ECF No. 11 at 17. The Commissioner responds
20 that the ALJ reasonably evaluated Dr. Adling's second opinion, asserting that
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1 Plaintiff's limitations were present prior to her DLI, and reasonably found the
2 opinion unpersuasive. ECF No. 13 at 15.

3 The Commissioner responds that the ALJ legitimately found that Dr. Adling
4 did not support his opinion, offering ““little more than a vague reference to fatigue
5 and the need to use the bathroom often[,]” when “Dr. Adling’s treatment notes,
6 [which] do not show symptomology, treatment, or examination findings consistent
7 with such severe limitations.” ECF No. 13 at 15 (quoting AR 21 and citing AR 228,
8 231, 234, and 236). The Commissioner adds that Dr. Adling’s treatment notes from
9 the relevant period record normal findings, comparatively mild diagnoses, and no
10 indication that Plaintiff mentioned either diarrhea or fatigue as an issue. *Id.*

11 The regulations that took effect on March 27, 2017, provide a new framework
12 for the ALJ’s consideration of medical opinion evidence and require the ALJ to
13 articulate how persuasive she finds all medical opinions in the record, without any
14 hierarchy of weight afforded to different medical sources. *See Rules Regarding the*
15 *Evaluation of Medical Evidence*, 82 Fed. Reg. 5844-01, 2017 WL 168819 (Jan. 18,
16 2017); 20 C.F.R. § 404.1520c. Instead, for each source of a medical opinion, the
17 ALJ must consider several factors, including supportability, consistency, the
18 source’s relationship with the claimant, any specialization of the source, and other
19 factors such as the source’s familiarity with other evidence in the claim or an
20 understanding of Social Security’s disability program. 20 C.F.R. § 404.1520c(c).

1 Supportability and consistency are the “most important” factors, and the ALJ
2 must articulate how he considered those factors in determining the persuasiveness of
3 each medical opinion or prior administrative medical finding. 20 C.F.R. §
4 404.1520c(b)(2). With respect to these two factors, the regulations provide that an
5 opinion is more persuasive in relation to how “relevant the objective medical
6 evidence and supporting explanations presented” and how “consistent” with
7 evidence from other sources the medical opinion is. 20 C.F.R. § 404.1520c(c)(1).
8 The ALJ may explain how he considered the other factors, but is not required to do
9 so, except in cases where two or more opinions are equally well-supported and
10 consistent with the record. 20 C.F.R. § 404.1520c(b)(2), (3).

11 Courts also must continue to consider whether the ALJ’s finding is supported
12 by substantial evidence. *See* 42 U.S.C. § 405(g) (“The findings of the
13 Commissioner of Social Security as to any fact, if supported by substantial evidence,
14 shall be conclusive . . .”). Prior to issuance of the new regulations, the Ninth
15 Circuit required an ALJ to provide clear and convincing reasons to reject an
16 uncontradicted doctor’s opinion and provide specific and legitimate reasons where
17 the record contains a contradictory opinion. *See Murray v. Heckler*, 722 F.2d 499,
18 501–02 (9th Cir. 1983). The Ninth Circuit has not yet ruled on whether its prior
19 caselaw requiring an ALJ to provide “clear and convincing” or “specific and
20 legitimate reasons” in the analysis of medical opinions still applies. *See Thomas S.*
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1 *v. Comm’r of Soc. Sec.*, No. C20-5083 RAJ, 2020 U.S. Dist. LEXIS 166729, at *6
2 (W.D. Wash. Sep. 11, 2020).

3 While the parties do not dispute that the new regulations apply to Plaintiff’s
4 claim, they disagree as to the extent that the prior Ninth Circuit standards for
5 rejecting medical opinion evidence continue to apply. *See* ECF Nos. 11 at 16; 13 at
6 13–14. However, courts in this District, as well as other district courts within the
7 Ninth Circuit, previously have concluded that the new regulations displace the prior
8 Ninth Circuit caselaw. *See Emilie K. v. Saul*, No. 2:20-CV-00079-SMJ, 2021 U.S.
9 Dist. LEXIS 43139, 2021 WL 864869, *3-4 (E.D. Wash. Mar. 8, 2021), reversed on
10 other grounds, No. 21-35360, 2021 U.S. App. LEXIS 36540 (9th Cir. Dec. 10,
11 2021); *Timothy Mitchell B. v. Kijakazi*, 2021 U.S. Dist. LEXIS 151191, 2021 WL
12 3568209, at *5 (C.D. Cal. Aug. 11, 2021) (deferring to the new regulations); *but see*
13 *Kathleen G. v. Comm’r of Soc. Sec.*, 2020 U.S. Dist. LEXIS 210471, 2020 WL
14 6581012, at *3 (W.D. Wash. Nov. 10, 2020) (applying the specific and legitimate
15 standard under the new regulations). This Court applies the standard set by the new
16 regulations to Plaintiff’s claims, but also considers whether the outcome would
17 differ under the earlier Ninth Circuit caselaw setting standards for evaluation of
18 medical opinions.

19 With respect to Dr. Adling, the ALJ found:

20 Michael Adling, D.O., completed a residual functional capacity
21 assessment in October 2019. This assessment indicated the claimant

1 was unable to complete even sedentary work, and concluded the
2 claimant would be absent four or more workdays per month. He stated
3 the claimant required being in a lying position more than 16 hours per
4 day. Dr. Adling is a treating source familiar with the claimant's
5 conditions and limitations. However, by the terms of his own opinion,
it relates only to the period from August 2019 forward. The claimant is
required to establish disability by June 30, 2018. Therefore, this opinion
is of no meaningful value in assessing the claimant's relevant residual
functional capacity. It is not persuasive.

6 Dr. Adling completed an additional assessment in May 2020. Again,
7 Dr. Adling reported the claimant's Crohn's disease and left hand pain
8 prohibited working at even a sedentary level with the same absenteeism
9 he previously reported. He further noted the claimant was unable to
10 perform work duties due to the need to use the bathroom on a chronic
11 basis. This assessment purported to relate these limitations to the first
12 date of treatment, which by submitted records was no later than April
13 2018. This assessment is not persuasive. Dr. Adling's 2020 opinion
14 reported the claimant required lying down more than ten hours per day,
15 rather than the 16 hours per day noted in the 2019 evaluation. He did
16 not identify the factors causing this considerable difference merely six
17 months apart. Further, he does not identify the evidence clarifying why
18 his earlier opinion the claimant's limitations began in August 2019 had
changed to the first date of treatment. Dr. Adling checked a box
indicating the claimant was unable to lift two pounds and/or was unable
to stand or walk. However, his included narrative rationale offered little
more than a vague reference to fatigue and need to use the bathroom
often. This is insufficient evidence to show such extreme limitations,
particularly given the claimant lived alone for months at a time, had an
infrequent treatment history, and engaged in "heavy" exercise prior to
the date last insured. Moreover, the objective record, including Dr.
Adling's treatment notes, do not show symptomology, treatment, or
examination findings consistent with such severe limitations. This
assessment is not persuasive as inconsistent with the available record.

19 AR 20–21 (internal citations to the record omitted).

20 To be sure, medical evaluations made after the expiration of a claimant's
21 insured status are relevant to an ALJ's evaluation of the claimant's pre-DLI

1 condition. *Smith v. Bowen*, 849 F.2d 1222, 1225 (9th Cir. 1998). Nevertheless, the
2 ALJ reasonably considered the length of Plaintiff's treatment relationship with Dr.
3 Adling; the supportability of the opinions Dr. Adling offered in his second
4 assessment, extending his opinions into the relevant period; and the consistency of
5 Dr. Adling's opinions with the medical record, including his own treatment notes.

6 The record substantiates that Dr. Adling's treatment notes from his
7 appointments with Plaintiff before her DLI do not show symptomology, treatment,
8 or examination findings consistent with his opinion that Plaintiff must lie down
9 sixteen hours a day or is unable to work full-time due to her need to use the
10 bathroom repeatedly. *See* AR 21, 228, 231, 234, and 236. As demonstrated by the
11 portion of the opinion quoted above, the ALJ's evaluation of Dr. Adling's opinion
12 was thorough and contained specific, clear, and convincing reasons for finding Dr.
13 Adling's opinion about the severity of Plaintiff's impairments unpersuasive.
14 Accordingly, the Court denies Plaintiff's Motion for Summary Judgment, ECF No.
15 11, in remaining part, and grants the Commissioner's Motion for Summary
16 Judgment, ECF No. 13.

17 Accordingly, **IT IS HEREBY ORDERED** that:

- 18 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is
19 **DENIED**.

1 2. Defendant's Motion for Summary Judgment, **ECF No. 13**, is

2 **GRANTED.**

3 3. Judgment shall be entered for Defendant.

4 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
5 Order, enter judgment as directed, provide copies to counsel, and **close the file** in
6 this case.

7 **DATED** February 22, 2022.

8
9 *s/ Rosanna Malouf Peterson*

10 ROSANNA MALOUF PETERSON
11 Senior United States District Judge
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